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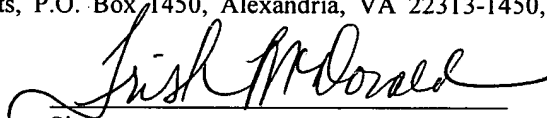
IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: Dean M. PICHON, et al.
Serial No: 10/034,836
Confirmation No: 9619
Filed: December 21, 2001
For: SELF-CLEANING FLUID DELIVERY DEVICE FOR
MEDICAL APPLICATIONS
Examiner: Cris Loiren RODRIGUEZ
Art Unit: 3763

#9/35
2321

CERTIFICATE OF MAILING UNDER 37 C.F.R. §1.8(a)

The undersigned hereby certifies that this document is being placed in the United States mail with first-class postage attached, addressed to Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450, on the 22nd day of January, 2004.


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TECHNOLOGY CENTER R3700

RESPONSE TO ELECTION REQUIREMENT

Dear Sir:

In response to the Election Requirement mailed December 23, 2003 in connection with the above -identified application, the applicants elect **Species (b), figures 5-7**, with traverse. At least the following claims are potentially readable upon the elected species: **claims 1-4, 6-8, 17, 32-34, and 39-42.**

The traversal is made on the following grounds. First, there are several claims which the applicants appear not to have had the opportunity to elect, because they are not readable upon any set of figures the Examiner has used to define the species between which election is required. Specifically, at least claims 9-12, 23, 24, 30, 31, 35-37, 43-45, 52, and 53 would potentially be readable upon a species defined by figs. 5-8, but might not be literally readable upon a species containing only figs. 5-7. Because of the relatedness of these claims to the claims listed above, it is believed that these claims, at least, should be searched and examined initially along with the specifically-elected species.

As a second ground for the traversal, there appear to be many claims which the applicants *inherently have no opportunity to elect* for initial prosecution because the election requirement is made on the basis of figures, not on the basis of species defined in the specification. Claim 38 is exemplary of this category of intellectual property which covers the nature of fluids deliverable by the elected device but which, because of the nature of the invention and the nature of chemistry, are described in the specification but not specifically shown in the figures. The applicants note also that the elected species represented by figs. 5-7 could be combined with other components or arrangements, shown in other figures or described in the specification (for example, figure 1), and that many embodiments covered by many claims are covered by a combination of figures, for example, a combination of figs. 2 and 1, a combination of figs. 5-7 and 1, etc. Any combination of figures would appear to represent a narrower species than species represented by individual figures or groups of figures smaller than the combination, and it would seem that the applicants should have the opportunity to elect claims commensurate with these combinations. Claim 5 is an example of claims of this class. That the applicants do not even have the opportunity to elect these or similar claims in a factually-accurate response (because of the "readable on" requirement), it is believed that the seemingly growing practice of the Patent Office in making election of species requirements based upon figures is, in many or most cases (for example, this case), flawed.

Although the applicants have noted several claims above which are "readable on" the elected species, the species can only properly be identified with reference, at least in part, to the specification. That is, should figures similar or identical to figures 5-7 be found in the prior art, without sufficient related description, it is not conceded that the claims listed above as "readable on" the elected species would be invalid in view of this hypothetical prior art. For example, at least elected claims 6, 17, 33, 34, and 39-42 are readable upon the elected species only when figs. 5-7 are considered in light of the specification. The reader will readily appreciate this upon study of the figures, these claims, and the specification. As a specific example, claim 17 describes, functionally, the nature of at least two predetermined gas pressures. This embodiment of the invention can be understood based upon the teachings of the specification in conjunction with figs. 5-7, but is not necessarily inherent in figs. 5-7 themselves. As another example, claim 1 recites a specific limitation (a gas regulator adapted to provide gas at at least two

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predetermined pressures), clearly understandable from a reading of the specification in conjunction with figs. 5-7, but nowhere necessarily inherently found specifically in any of these figures. All claims currently pending or added to the above-identified application should be interpreted based upon the legal guidelines for doing so, not necessarily with any reliance upon the applicants' attribution of the above-identified elected claims to figs. 5-7, which has been made solely for the purposes of defining a reasonable species for initial search and examination.

If, for any reason, the Examiner is of the opinion that a telephone conversation with the applicants' representative would expedite prosecution, the Examiner is kindly invited to contact the undersigned at 617-573-7851.

Respectfully submitted,
Dean M. PICHON, et al., Applicants

By: 

Timothy J. Oyer, Ph.D., Reg. No. 36,628
WOLF, GREENFIELD & SACKS, P.C.
600 Atlantic Avenue
Boston, Massachusetts 02210-2211
Telephone: (617) 720-3500

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